IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 1526 of 1986
Date of decision : 4.4.2007.

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Parties Name

General Manager, Punjab Roadways,
Jalandhar-I

..... Petitioner

vs.

Joginder Ram

.....Respondent

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Suveer Sehgal, Additional Advocate General,
Punjab for the petitioner.

None for the respondent.

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S.N. Aggarwal, J.

The respondent was working as conductor under the petitioners. He filed an application under Section 15(2) of the Payment of Wages Act, 1936 (in short the 'Wages Act'), for a direction to the petitioner for refund of the wages deducted illegally. The petitioner set up the plea that the deductions have been made from the salary of the respondent vide orders dated 22.11.1982, 24.6.1982 and 20.5.1982 which have been passed in accordance with law by which 8 increments of the respondent have been

withheld. Hence, it was prayed that the application be dismissed. It was also pleaded that the said application was barred by limitation.

The learned trial Court framed the issue.

The parties led the evidence.

The authority under the Wages Act partly set aside the deductions made in pursuance of the order dated 22.11.1982 while the orders dated 24.6.1982 and 20.5.1982 were set aside in entirety vide order dated 7.5.1984.

The petitioner filed an appeal. The learned Lower Appellate Court upheld the findings of fact recorded by the learned trial Court and dismissed the appeal vide order dated 30.1.1986.

Hence, the present petition.

The submission of the learned State counsel was that no statutory appeal was filed by the respondent against the orders dated 22.11.1982, 24.6.1982 and 20.5.1982. Therefore, the application under the Wages Act was not maintainable. It was also submitted that the orders were passed in the matter in the month of May, June and November 1982 but the application under Section 15 (2) of the Wages Act was filed only on 8.3.1983.

These submissions have been considered. Under Section 15 (2) of the Wages Act, such application could be filed by the employee within 12 months from the date on which the deduction from wages was made or from the date on which the payment of wages was due to be made, as the case may be. In the present case, the orders were passed by the petitioner in the month of May, June and November 1982, while the application under Section 15 (2) of

the Wages Act was filed by the respondent in March 1983 i.e. within 12 months. Therefore, the said application was not barred by limitation.

No doubt the statutory appeal was required to be filed but non-filing of the statutory appeal within the department does not debar the remedy of the respondent to come to the Civil Courts. This is all the more justified, when the proper procedure has not been followed while passing the impugned orders.

The perusal of the trial Court file reveals that the order dated 18.6.1982 was passed by the petitioner by which two annual increments of the respondent were stopped with cumulative effect. No enquiry was held. The settled law is that stoppage of increment with cumulative effect is a major punishment and for imposing major punishment, regular procedure of holding enquiry is laid down under the Punjab Civil Services (Punishment and Appeal) Rules. The said procedure was not followed. Therefore, this order has not been passed by following the due procedure and is illegal in the eye of law.

So far as the second order dated 20.5.1982 is concerned, no such order has been produced on the file by the petitioner, nor it has been proved, if proper procedure has been followed before passing this order.

Regarding the order dated 22.11.1982, the respondent was not heard on quantum of sentence.

The order passed by the authority under the Wages Act has been upheld by the lower Appellate Court. No ground to

interfere with the concurrent finding of facts recorded by the Courts below.

No merits. Dismissed.

(S.N.Aggarwal)
Judge

4.4.2007.
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